

STATEMENT OF REP. JOHN CONYERS, JR.
Courts, the Internet, and Intellectual Property Subcommittee
Hearing on H.R. 1561, the “Patent and Trademark Fee Modernization Act”
Thursday, April 3, 2003

It’s nice to see our former Judiciary colleague Jim Rogan back here. The U.S. Patent & Trademark Office always has played a crucial role in America’s economy. The last decade has seen an unprecedented boom in technology, due mainly to the invention of new technologies and patents granted on them by the PTO. The importance of patents to technological advancement is evidenced by the rapid increase in the number of patent applications. As our economy grows and technology advances, our oversight over the PTO becomes even more important.

Past oversight indicated that we needed to streamline the PTO. We were able to accomplish that to a certain extent with the American Inventors Protection Act of 1999. Among other things, the bill restructured the agency to make it more efficient and effective at examining patents and registering trademarks. Unfortunately, the PTO still faces obstacles to becoming completely efficient.

As you all may be aware, the PTO takes no money from taxpayers; instead, it is fully funded by user fees and generates approximately \$1 billion per year in revenues from those fees. This success has been an Achilles’ heel – the Administration and appropriators take advantage of the revenues and treat the PTO as a cash cow, diverting hundreds of millions of dollars of fees every year for other government programs. That diversion is making it difficult for the PTO to hire or even retain qualified examiners.

But these are not just concerns about personnel and efficiency – there are real world issues. The lack of resources has caused the time period between the filing of a patent application and a final decision on it to grow from 19.5 months to 26 months in just a few years and is expected to be 38.6 months by 2006. At that rate, inventions will be obsolete by the time

they're patented. Our technological advancement and our economy can only suffer if Congress and the Administration sit idly by while this happens.

Fortunately, former Subcommittee Chairman Coble, Ranking Member Berman, and I worked on several pieces of legislation to address these issues, hoping they would send a message that diversion is wrong and must be stopped. Unfortunately, the problem continues.

The PTO now has proposed a new plan to modernize itself. Among other things, the plan calls for an increase in filing fees and for the use of outside contractors to conduct patent searches. I have reservations about both of these proposals. First, it is troubling to me that we would raise fees for patent applicants at the same time that their money is being diverted to other, unrelated programs. By increasing fees without stopping diversion, we could be creating a bigger pool of money from which the Administration and the appropriators could steal.

Second, I believe the use of outside contractors could raise many issues. Searching old patents and journals is one of the core functions of the PTO and its examiners, giving that job to outside companies would be like having the SEC hire someone else to review IPO's. Moreover, I would like to know what protections patent applicants would have for contractors that do bad searches – would applicants get extra time for their applications? Finally, there could be major conflicts of interest if a company that seeks patents gets hired as a contractor.

These are some of the questions I have and hope can be answered during this hearing.